IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

THURSDAY, THE 9TH AUGUST 2007 / 18TH SRAVANA 1929

OP.No. 7220 of 2003(S)

OA.907/1999 of CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

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PETITIONER: APPLICANT

P.RAMACHANDRAN, MAZDOOR,
GARRISON ENGINEER OFFICE, NAVAL BASE P.O.,
KOCHI-682 004.

BY ADV. SRI.S.SREEKUMAR
SRI.K.C.ELDHO

RESPONDENTS: RESPONDENTS
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1. GARRISON ENGINEER OFFICER,
NAVAL BASE, NAVAL BASE P.O., KOCHI-682 004.

2. THE CHIEF ENGINEER,
DAKSHIN KAMAND MUKHYALAYA ENGINEER SAKHA,
HEAD QUARTERS, SOUTHERN COMMAND,ENGINEERS BRANCH,
PUNE-413 001.

3. COMMANDANT, 18,
FIELD AMMUNITIES DEPOT, C/O 56APO,
PATHANKADE, BY-PASS, PUNJAB.

4. UNION OF INDIA,
MINISTRY OF DEFENCE, NEW DELHI.

5. CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM, REPRESENTED BY ITS REGISTRAR.

BY ADV. SRI.P.PARAMESWARAN NAIR,ASST.SOLICITOR
SRI.JOHN VARGHESE, SCGSC

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 9/8/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS -

P1 - TRUE COPY OF ORIGINAL APPLICATION FILED BY THE PETITIONER VIDE OA 907/99.

P2 - TRUE COPY OF REPLY STATEMENT FILED BY THE RESPONDENTS.

P3 - TRUE COPY OF ORDER DT. 7.11.2002 OF THE CAT, ERNAKULAM.

RESPONDENTS' EXHIBITS -

R1 (a) - TRUE COPY OF ORDER DT. 11.2.1993 OF THE 2ND RESPONDENT.

K. BALAKRISHNAN NAIR & HARUN-UL-RASHID, JJ.

O.P.No.7220 of 2003 - S

Dated, this the 9th day of August, 2007

JUDGMENT

Balakrishnan Nair, J.

The petitioner challenges Ext.P3 order of the Central Administrative Tribunal dated 7.11.2002 in O.A.No.907 of 1999. The brief facts of the case are the following:

The petitioner was working as a semi skilled mazdoor in Punjab in the scale of pay of Rs.800-1150. He sought transfer to Kerala on compassionate grounds. The said transfer was allowed as per order dated 11.2.1993. He has been given posting as mazdoor in the scale of pay of Rs.750-940. It was specifically provided in that order that he need move to the new destination if only he is willing. The petitioner accepted the transfer and joined at Cochin. At the time of transfer, his basic pay was Rs.1050/-, but he was granted only the basic pay of Rs.940/- which was the maximum of the scale of pay of mazdoor. So the petitioner submitted a representation on 2.6.1999 claiming pay protection which was rejected by order dated 9.6.1999. The O.A. was filed challenging the said order and seeking consequential reliefs. According to the petitioner he was entitled to get pay protection. But the respondents resisted the application stating that the petitioner's case is governed by Office Memorandum dated 31.5.1980 issued by the Ministry of Defence which was produced as Ext.R2 along with the reply statement in the Original Application. They further pointed out that clause (d) of the said O.M. governs his case. But the petitioner would contend that clause (a) of the said O.M. governs him. But the Central Administrative Tribunal accepted the contentions of the respondents and dismissed the O.A. by Ext.P3.

Hence this writ petition challenging the said order.

2. The petitioner reiterated the contentions mentioned above before us also. The respondents stick to the stand that his case is governed by clause (d) of Ext.R2.

3. The relevant portion of Ext.P2 reads as follows:

> "FIXATION OF PAY ON POSTING/TRANSFER ON COMPASSIONATE GROUNDS.
>
> A question has been raised in regard to fixation of pay of individuals when posted/transferred on compassionate grounds. The matter has been examined and the undersigned is directed to clarify the position in this regard as under:-
>
> (a) In case where posting/transfer involves a change in trade/grade, the service rendered prior to such posting/transfer will be treated as continuous and the individuals may be allowed to draw the last pay drawn. The date of increment will remain unaltered.
>
> (b) In case where posting/transfer involves change in trade/grade, the service rendered in the previous post will be treated as continuous. In such cases, the pay scales at the stage equal to the pay drawn in the old pay scale or if there is no such stage, at the stage next below that pay, the difference being treated as personal pay to be absorbed in the next increment. The service rendered on the pay last drawn in the pay scale, will count towards the next increment in the new pay scale.
>
> (c) In case, where posting/transfer involves reduction in the grade/trade, the pay of the individuals will be fixed by giving the benefit of completed years of service rendered in the previous post.
>
> (d) When the appointment is made to a new post and the maximum pay in the time scale of that post is less than his

quasi-permanent/substantive pay in respect of the old post, the individual will draw that maximum as initial pay.

2. This issue with the concurrence of the Ministry of Finance (Defence/AG) vide their uo No.1002/PB of 1980."

4. The petitioner has been transferred from a higher grade post of Semi Skilled Worker (Rs.800 - 1150) to a lower grade post of Mazdoor (Rs.750 - 940). Therefore, there is a change in grade on his transfer. The petitioner claims that clause (a) of the aforementioned O.M. will apply to his case. But, clauses (c) and (d) deal with an incumbent who is transferred from a higher grade to a lower grade. Admittedly, the petitioner has been transfered to a lower grade. So, we feel that clauses (c) and (d) will more appropriately apply to the case of the petitioner. So, he can draw only the maximum of the pay payable in the new grade or scale. So, we find nothing illegal in the decision of the respondents which was affirmed by the Central Administrative Tribunal.

Accordingly this writ petition fails and it is dismissed.

K. BALAKRISHNAN NAIR
JUDGE

HARUN-UL-RASHID,
JUDGE.

mt/

K.BALAKRISHNAN NAIR &
HARUN-UL-RASHID, JJ.

O.P. No.7220 OF 2003-S

JUDGMENT

9.8.2007